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SEVENTH REPORT ON STATE RESPONSIBILITY

by

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Addendum

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CHAPTER II

SETTLEMENT OF DISPUTES RELATING TO THE LEGAL CONSEQUENCES OF AN INTERNATIONAL CRIME

140. As indicated in the third 1/, fourth 2/ and fifth 3/ reports and in paragraph 109 supra, the Special Rapporteur's proposed draft articles for Part Three, as submitted in 1993 4/ only cover the settlement of disputes following the adoption of countermeasures against a State which committed a wrongful act of the kind characterized as delict in article 17 of Part One. Only for such disputes do the proposed draft articles 1-6 envisage the procedures of conciliation and arbitration (with a possible role for the International Court of Justice in case of failure to establish an arbitral procedure or alleged breach of fundamental rules of arbitral procedure by the arbitral tribunal). The said draft articles do not cover the disputes possibly arising following the adoption of countermeasures against a State which has committed or is committing a crime.

141. Considering the gravity of international crimes of States, the procedure which commends itself for any disputes arising between two or more States following the adoption of countermeasures as a consequence of an international crime is judicial settlement before the International Court of Justice. Such procedure should notably be envisaged as a compulsory one, in the sense that it could be initiated by unilateral application by any one of the parties to the dispute, including, of course, the State which has committed or is committing the international crime. The parties should be at liberty, however, to opt for arbitration.

142. As regards the scope of the ICJ's competence at this (post-countermeasures) stage, it should be less broad than that of the conciliation and arbitration procedures envisaged in draft articles 1 and 3 as proposed in 1993.

143. As stated in the cited draft articles and in paragraphs 64 and 66 of the fifth report the competence of the two procedures envisaged in draft articles 1 and 3 of Part Three should embrace not only issues relating to the application of the rules relating to the regime of countermeasures (such as those arising under articles 11 to 14 of Part Two of the project) but also any issues which may arise in the application of any provisions of the State responsibility project, including those of articles 1-35 of Part One and those of articles 6-10 bis of Part Two.

1/ A/CN.4/440, paras. 52-62.

2/ A/CN.4/444, paras. 24-51.

3/ A/CN.4/453, paras. 41-59.

4/ A/CN.4/453/Add.1 and Corr.1 to 3.

144. Such an extension of the scope of the "third party" procedure would not be appropriate for the ICJ's competence at present in question.

145. Considering that the ICJ would have already pronounced itself by a judgment (as envisaged in para. 108-111 supra and in article 19 of Part Two as proposed in the present report) upon the existence/attribution of the international crime, the Court's competence in the post-countermeasures phase should not extend to that issue. It should cover the issues of fact or law relating to the legal consequences - substantive or instrumental - of the international crime. This would encompass any issues arising in the application of any provisions of articles 6 to 19 of Part Two. The ICJ's competence should thus not extend, in principle, to any issues arising under articles 1-35 of Part One.

146. The relevant draft article of Part Three - namely, article 7 - should read as follows:

1. Any dispute which may arise between any States with respect to the legal consequences of a crime under articles 6 to 19 of Part Two shall be settled by arbitration on either party's proposal.

2. Failing referral of the dispute to an arbitral tribunal within four months from either party's proposal, the dispute shall be referred unilaterally, by either party, to the International Court of Justice.

3. The competence of the Court shall extend to any issues of fact or law under the present articles other than the question of existence and attribution previously decided under article 19 of Part Two.

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